

---

# Appeal Decision

Site visit made on 28 February 2017

**by Michael Evans BA MA MPhil DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 15 March 2017**

---

**Appeal Ref: APP/J1535/D/16/3164435**

**Oak Grove, Theydon Road, Theydon Bois CM16 4EF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Scott Kyson against the decision of Epping Forest District Council.
  - The application Ref PL/EPF/1839/16 was refused by notice dated 9 September 2016.
  - The development proposed is the formation of a new boundary fence.
- 

## Decision

1. The appeal is dismissed.

## Main issues

2. The main issues in this appeal are:
  - Whether the proposed development amounts to inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (The Framework) and the development plan.
  - The effect on the openness of the Green Belt.
  - The effect on the character and appearance of the locality.
  - If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

## Reasons

### ***Inappropriate development***

3. The appeal concerns a detached dwelling located within the Green Belt where Government policy in the Framework identifies development that would not be inappropriate. The term 'building' is not defined in the Framework but the definition in the 1990 Act refers to any structure or erection and is therefore taken to include fences. As a result I shall regard the proposal as a 'building' for the purposes of the Framework. New buildings should be regarded as
-

inappropriate development in the Green Belt unless they fall within the list of exceptions given in paragraph 89 of the Framework.

4. These include the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces. The new boundary fence would largely replace a significantly lower picket fence and therefore be materially larger. The proposal would not satisfy this or any of the other exceptions given in Paragraph 89.
5. When judged against Government policy the proposal would therefore comprise inappropriate development in the Green Belt. Inappropriate development should not be approved except in very special circumstances, which will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
6. Epping Forest District Local Plan Alterations (LPA) Policy GB2A indicates that planning permission will not be granted for development within the Green Belt unless it comprises one of a number of stated types. The proposal would not fall within any of these and as a result is in conflict with this policy.

### ***Openness of Green Belt***

7. There is a fairly modest length of taller fencing at the southern end of the site but the remainder of that to be removed comprises appreciably lower picket style fencing. The proposed boundary treatment would have an overall length of about 60m, according to the Council. It would also be 2m high with new planting to the front.
8. The openness of the Green Belt derives from an absence of development. The presence or otherwise of vegetation and the extent to which development may be visible has no bearing on this. If this were not the case much development could take place in locations obscured by planting which would undermine the fundamental aim of policy to restrain development in the Green Belt.
9. Despite being no higher than the fairly small section of fencing at the southern end, the new fence would have a significantly greater impact as a result of its appreciably taller height by comparison to the picket fence. The new boundary treatment would have a solid appearance, unlike the picket fence where there are gaps between the vertical rails which provide some openness. Moreover, the additional physical extent of the new fence compared to the picket fence would be particularly significant given the length involved. As a result, there would be a material reduction in the openness of the Green Belt.

### ***Character and appearance***

10. Oak Grove is located at the end of frontage residential development along the western side of Theydon Road. There is a field on the opposite side of the road and forest land to the south. The dwelling is towards the northern end of a broadly triangular plot which extends a significant distance to the south.
11. The picket fence extends across the road frontage of the site in the part to the south of the house. Vegetation has grown through some of the gaps between the vertical rails covering the fencing in places and also rises significantly above the reasonably low feature. There is also a hedge to the front of the house itself. Due to these factors and despite being enclosed the site has a relatively green and verdant street frontage.

12. Harsher and more urban boundary treatments such as walls, railings and solid fencing are found to the north so that the wider character is varied. However, these properties are not located at the end of the ribbon of development along the western side of Theydon Road and the appeal site is in a particularly sensitive position given the open countryside to the south and east. Moreover, the planting and absence of intrusive boundary treatments enables an attractive visual transition from the frontage dwellings to open countryside. This is the case regardless of the presence of other means of enclosure, such as walls, found elsewhere.
13. Although full details have not been provided and it would need to be the subject of a condition, new planting is proposed to the front of the fence. The new fence would be in the same position as the existing fencing. Because of the need to retain sightlines for drivers, the new vegetation would be fairly low for an appreciable length towards the southern end, as shown on the site elevation drawing. This would result in the solid fence being clearly visible above the planting for more than half of its height, forming a somewhat harsh and stark feature in the streetscene, detracting from the sense of a smooth transition to the open countryside.
14. It also seems likely to me that the fence would be a longer lasting feature than the vegetation. The latter may well also take some time to have any significant mitigating effect and I also have concerns that there is inadequate space in the southern part of the frontage for it to grow and survive anyway. The existing relatively high vegetation behind the fence would provide a green backdrop but have no screening effect because of its position. I am not therefore persuaded that the new and existing planting would justify accepting the development and consider that the visual impact of such a relatively tall feature in such fairly close proximity to the road would be unacceptable.
15. For these reasons, I consider that rather than appropriately reflecting boundary treatments in the locality, the fence would be an intrusive, incongruous and overly dominant feature, given its specific context. In consequence, there would be harm to the character and appearance of the locality.
16. Epping Forest District Local Plan Policies DBE1, DBE4, LL2, LL3 and LPA Policies CP2 (iv) and GB7A have the overall intention of protecting character and appearance in respect of matters such as the Green Belt, urban environment and landscape. Because of the adverse effects I have found, the proposal would be contrary to these policies. It has not been demonstrated that the specific aim of Policy LL3 that development on the edge of settlements should show a sensitive appreciation of its effect, such as by extensive landscaping, would be satisfied.

### ***Other considerations***

17. It is indicated that there have been a number of robberies at Oak Grove. The letter from Essex Police refers to a single unspecified crime. However, it does not include any suggestion that the existing boundary treatment has compromised security or that a fence should be built to remedy this. Moreover, it may be that such concerns could be addressed by other means such as CCTV.
18. It is suggested that the existing boundary treatment gives little acoustic protection making a large part of the outside amenity space undesirable to use for a large part of the year. I have considered the submitted leaflet regarding

acoustic fencing and barriers. However, there is no noise survey to show that the garden is subject to sound levels that might justify the construction of the fence for mitigation purposes.

19. It is suggested that there are gaps in the existing boundary treatment that would enable children to get onto the road. However, it is not clear why this could not simply be resolved by repairing the existing fence, or erecting a less intrusive replacement than now proposed. Reference is also made to privacy but there is no detailed evidence to support this and the garden is already particularly well screened from the road.
20. Due to the above factors, I am not persuaded that these matters should weigh significantly in favour of the appeal. Moreover, the failure to respond to local character and unacceptable visual appearance outweigh any functional benefit, having regard to Paragraphs 58 and 61 of the Framework.
21. I have considered the photographs of brick boundary treatments in the area and the cases where planning permission was granted by the Council for such development. However, these concern other sites and the full details and background to these have not been provided. It has not therefore been demonstrated that the circumstances are comparable to this proposal and the Council suggests that there are significant differences. These other boundary treatments are not therefore an important consideration in this appeal and are afforded little weight.

### **Conclusion**

22. Harm would be caused to the Green Belt as a result of inappropriate development and a loss of openness. In accordance with Paragraph 88 of the Framework substantial weight should be afforded to this harm. There would also be harm to the character and appearance of the locality to which significant weight should also be attached.
23. Due to the limited weight attached to them for the above reasons, it is concluded that the other considerations raised do not clearly outweigh the harmful effect of the development. There can, in consequence, be no very special circumstances and the proposal would be contrary to the Framework policies concerning development in the Green Belt. There would also be conflict with the relevant development plan policies. It is therefore determined that the appeal fails.

*M Evans*

INSPECTOR